

**BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM**

**PRESENT: SHRI.A. SHAJAHAN,  
STATE ELECTION COMMISSIONER**

**Thursday, the 23<sup>rd</sup> day of May, 2024**

**O.P. No. 23 of 2022**

**Petitioner**

: C.G. Biju,  
S/o. George,  
Chackalakkal Veedu,  
Karthedam, Malippuram P.O.,  
Ernakulam - 682 511.

(Voter, Ward No.07,  
Elankunnapuzha Grama Panchayat)

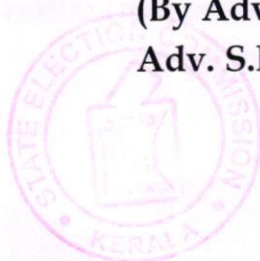
**(By Adv. T.N. Suresh)**

**Respondent**

: Rasikala Priyaraj  
W/o. Priyaraj,  
Payyappilly Veedu,  
Perumalppady, Elankunnapuzha P.O.,  
Ernakulam - 682 503.

(President & Member, Ward No.04,  
Elankunnapuzha Grama Panchayat)

**(By Adv. P.M. Benzir &  
Adv. S.M. Rajendran)**



**ORDER**

This is a petition filed under section 36 (1) read with section 35 (1) (o) of the Kerala Panchayat Raj Act for declaring that the respondent has incurred disqualification under section 35 (1) (o) of the Act and she ceased to hold the office of a member of Elankunnapuzha Grama Panchayat as had caused loss, waste and misuse of fund to the panchayat.

2. The Petitioner's case in brief is as follows:

The Petitioner is a voter in Ward No.7 of the Elankunnapuzha Grama Panchayat. The respondent is elected member of Ward No.4 of the Elankunnapuzha Grama Panchayat and presently holding the position of President of Elankunnapuzha Grama Panchayat. During her term as President, amount of Rs.2,20,000/- was provided in the annual budget of panchayat for 2021-22 for the construction of playground and allied works for Mahatma Buds School functioning within the panchayat area. Accordingly panchayath invited tenders for the work after obtaining Administrative as well as technical sanction. The work was awarded in favour of one M P Sabu. Buds school is functioning at the eastern side of a Primary Health Centre. Moreover there is boundary wall in between the Buds school and the Primary Health Centre. However the respondent in his capacity as President of the Elankunnapuzha Grama panchayat siphoned off the funds sanctioned for the construction of playground and allied works of Buds School for laying tiles on the back portion of Primary Health Centre. There was no authorization for laying the tile on the back



portion of Primary Health Centre. Accordingly the respondent misappropriated an amount of Rs.1,41,729/- for laying tiles on the back portion of Primary Health Centre without proper authorization and thereby caused loss to the panchayat. Respondent has committed loss, waste and misuse of panchayat funds and thereby incurred disqualification under section 35 (1) (o) of the Act.

3. The Respondent's contentions in short are as follows:

The Original Petition is not maintainable either on facts or on law and it was preferred only with ulterior motive to wreak his political vengeance against the Respondent. The work was implemented under the supervision of the engineering wing of the LSGD strictly in accordance with the law, after obtaining all requisite sanctions from the concerned authorities. It is the collective decision of the Panchayat Committee. There is no misuse of power as alleged by the petitioner.

4. Both petitioner and respondent were adduced evidence and hearing given to them. However, from the fact and circumstances of the case, the foremost question to be considered is whether the petitioner got *locus standi* to file the original petition before the Commission. Section 35 of the Kerala panchayat Raj Act deals with disqualification of members on various grounds. Other words, section 35 of the Act provides the circumstances under which a member of panchayat cease to hold office as a member. Section 35 (1) (o) is one among such situation and going by the same a member shall cease to hold office as such, if he is liable for the loss, waste, or misuse caused to the panchayat.



5. Section 36 deals with the determination of disqualification of a member. It reads as follows:-

“36. Determination of subsequent disqualification of a member.— (1) Whenever a question arises as to whether a member has become disqualified under Section 30 or Section 35 except clause (n) thereof after having been elected as a member, any member of the panchayat concerned or any other person entitled to vote at the election in which the member was elected, may file a petition before the State Election Commission, for decision.

Provided that, the Secretary or the Officer authorized by the Government in this behalf may refer such a question to the State Election Commission for decisions.

(2) The State Election Commission, after making such enquiry as it considers necessary in the petition referred to in or the reference made thereunder in sub-section (1) whether so however that the State Election Commission may pass an interim order as to whether a member may continue in office or not till a decision is taken on the petition or the matter involved in the reference.

(3) A petition or reference referred to in sub-section (1) shall be disposed of in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when trying a suit.”

6. Accordingly section 36 would come into play when a question arises as to whether a member has become disqualified under any clauses under section 30 or section 35, except clause (n) thereof after having been elected



as a member and a decision on such a dispute, either a petition by any member of the panchayat or by any other person entitled to vote at the election in which the member concerned was elected or a reference by the Secretary of the concerned panchayat or officer authorized by the Government in that behalf shall be decided by the Commission and the provisions under section 36 would reveal that the jurisdiction exclusively lies with State Election Commission. *Locus standi* and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the Court before which an action is brought. Then where there is no *locus standi* to file an action, the Court cannot properly assume jurisdiction to entertain the action.

7. As elucidated above, section 36 (1) of the Act provides the *locus standi* of person to bring an action under section 36 of the Act before the Commission. At the outset of the original petition itself petitioner should demonstrate his legal capacity to agitate the matter before the Commission under section 36 of the Act. Any member of the panchayat concerned or any other person entitled to vote at the election in which the member was elected are having the necessary *locus standi* under section 36 (1) of the Act, apart from officials authorized for the purpose. In other words, the *locus standi* to bring an action under section 36 of the Act is statutorily fixed under section 36 of the Act itself.
8. However, in the instant case, petitioner has no case that he is an elected member of Elankunnapuzha Grama Panchayat so that he can file a petition before the Commission. Similarly, petitioner has no case that he is a registered voter in the electoral roll of ward No. 4 Elankunnapuzha Grama Panchayat, in which the respondent was elected. Petitioner has neither



pleaded nor proved his *locus standi* to bring an action under section 36 of the Kerala Panchayat Raj Act.

9. Admittedly petitioner is a permanently residing in ward No. 7 Elankunnapuzha Grama Panchayat and such a person lacks the necessary *locus standi* to file a petition under section 36 of the Act against an elected member of ward No. 4 alleging disqualification. Disqualification against an elected member of a constituency can be agitated by a voter of that constituency alone. Hence petitioner is a stranger to the proceedings under section 36 of the Act.

Therefore the petitioner has no *locus standi* to invoke the jurisdiction of the Commission under section 36 of the Kerala Panchayat Raj Act and hence petition is dismissed.

Pronounced before the Commission on the 23<sup>rd</sup> day of May, 2024

Sd/-  
A. SHAJAHAN  
STATE ELECTION COMMISSIONER

//True Copy//



**B. SURENDRAN PILLAI**  
Pen No : 101664  
**SECRETARY**  
State Election Commission  
Kerala, Thiruvananthapuram

